

IRWIN I. KIMMELMAN  
Attorney General of New Jersey  
Attorney for Plaintiff  
State of New Jersey, Department  
of Environmental Protection

Richard J. Hughes Justice Complex  
CN-112  
Trenton, New Jersey 08625

BY: DAVID W. REGER  
Deputy Attorney General  
(609) 984-5612

SUPERIOR COURT OF NEW JERSEY  
CHANCERY DIVISION  
ESSEX COUNTY  
DOCKET NO. C-1852-83E

STATE OF NEW JERSEY, DEPARTMENT  
OF ENVIRONMENTAL PROTECTION,

Plaintiffs

v.

SCIENTIFIC CHEMICAL PROCESSING,  
INC., a corporation, et al.,

Defendants

Civil Action

AFFIDAVIT OF DAVID W. REGER

STATE OF NEW JERSEY)

:SS

COUNTY OF MERCER )

DAVID W. REGER, of full age, being duly sworn according to  
law, upon his oath, deposes and says:

1. I am the Deputy Attorney General assigned to handle the  
above captioned matter on behalf of the State of New Jersey, Department  
of Environmental Protection (DEP).

2. By Revised Order of this Court dated June 16, 1983, all  
defendants, with the exception of Marvin Mahan, including Scientific  
Chemical Processing, Inc. (SCP), Energall, Inc. (Energall), Presto,  
Inc. (Presto), Sigmond, Case, Barnes and Dominick Presto, together  
with landowners, Sigmond and Presto, partnership and its individual

345804



owners (Newark site) and Inmar Associates, Inc. (Carlstadt site) are responsible for cleanup of said sites which they were associated or connected with.

3. In the same Order, this Court directed that each of the above parties either provide DEP and the Court with a cleanup plan for the site/sites which he was associated with or, in the alternative, provide a financial plan showing that said defendant is incapable of contributing to or paying for the cleanup. Said plans were to be provided by July 1, 1983.

4. On July 7, 1983 a hearing was held before this Court regarding the adequacy of cleanup plans submitted by the defendants herein. At the hearing, I advised the Court on behalf of DEP that the proposal of Sigmond and Presto, partnership, for cleanup of the Newark site was adequate. I further advised that the proposal submitted on behalf of Inmar Associates for cleanup of the Carlstadt site was inadequate.

5. Subsequently, by letter dated August 5, 1983, I advised the Court that Inmar Associates had submitted an appropriate proposal for cleanup of the Carlstadt site (copy attached as "Exhibit A"). In the same letter, I advised the Court that Messrs. Sigmond and Presto had not made an adequate effort to promptly retain a cleanup contractor.

6. Both Inmar Associates and Sigmond and Presto, partnership, represented to this Court and the State that they had retained S & W Waste, Inc. ("S & W") as the cleanup contractor to handle the Carlstadt and Newark jobs.

7. By mid-August personnel of S & W had begun sampling the drums, hold tanks, and trailers located on the Carlstadt site. Said sampling activities were completed on or about October, 1983.

8. On October 6, 1983, a Cleanup Agreement was executed between

Sigmond and Presto, partnership, and S & W concerning cleanup of the Newark site (copy attached as Exhibit "B").

9. On November 15, 1983, after numerous discussions between personnel from DEP and S & W regarding the Newark site cleanup, an on site inspection was held. At that time personnel from the DEP advised S & W of numerous issues which must be addressed in connection with the sampling and analytical phase of the cleanup. In addition, S & W was advised that priority for the cleanup should be as follows:

- a. Removal of five drums of dicumyl peroxide;
- b. Removal of materials by generators who have accepted responsibility for their waste;
- c. Removal of bulk liquids - drums for removal of lab packs.

10. I have discussed cleanup of the Newark site with Harry Moscatello, Vice-President of S & W. He has advised that he will not move forward on the first phase of the cleanup, which is sampling and analysis, until Mr. Presto provides him with written authorization to do so.

11. I have contacted Mr. Presto by telephone requesting that he issue a letter authorizing S & W to proceed on the first step of the cleanup. However, Mr. Presto has refused to forward S & W such authorization. Accordingly, there is presently no work being performed to clean up the Newark site.

12. In a recent telephone conversation with Mr. Presto, I requested that he arrange to have generators who agreed to remove their waste contact S & W in order that plans can be made for this operation. To date Mr. Presto has taken no action in this regard.

13. Pursuant to prior orders of this Court, Mr. Presto and Mr. Sigmond have an obligation to make a good faith effort to move the

cleanup of the Newark site as quickly as possible. Based upon the above facts, it is clear that Sigmond and Presto have not fulfilled their obligation.

14. By letter dated November 14, 1983, S & W advised Marvin Mahan, a Director of Inmar, that it was suspending all work on the Carlstadt cleanup until a contract is executed for the job. (Copy attached hereto as Exhibit "C"). After learning of S & W's position, I contacted Mr. Egan requesting that he advise me of the status of the contract between his client and S & W. I further requested that Mr. Egan forward me a status report on the Carlstadt cleanup. To date, I have no evidence that the above contract was executed. Accordingly, S & W is not working on the Carlstadt cleanup.

15. Based upon discussions with personnel from S & W all analyses, except PCB, have been performed on the samples taken at the Carlstadt site. S & W has refused to perform the PCB analysis until a contract is executed. Moreover, the DEP has not been provided with analytical results obtained thus far.

16. I have been advised by Mr. Egan that neither Inmar nor S & W will agree to execute manifests which must be completed before the hazardous wastes can be transported for disposal. Mr. Egan takes the position that since Inmar did not generate the hazardous waste, it should not be required to execute the manifest.

17. The DEP takes the position that representatives of SCP (Messrs. Presto, Sigmond, Case and/or Barnes) should execute the manifests for transport of materials from both the Carlstadt and Newark sites since SCP generated the waste during the course of its business activities.

18. From the above, it is obvious that neither the Carlstadt nor the Newark site cleanups are moving at a reasonable pace. Given this

set of circumstances, the DEP has no other choice but to move before this Court seeking an order setting down this matter for a hearing in order that it can determine what action must be taken to promptly cleanup the SCP sites. Thereafter, DEP respectfully requests that this Court impose the cleanups, with appropriate time schedules being established, on the defendants.

19. Based upon the efforts made by the defendants to date, it is the DEP's position that the above cleanups will not properly move forward until defendants are required to post performance bonds and/or escrow funds to support the cleanup.

20. For the foregoing reasons, I respectfully request that this Court grant the within motion.

*David W. Reger*

David W. Reger  
Deputy Attorney General

Sworn and subscribed to  
before me this 13<sup>th</sup> day  
of January, 1984.

*Jane A. Yannello*

JANE A. YANNELLO  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires August 25, 1988



State of New Jersey

IRVING KIMMELMAN  
ATTORNEY GENERAL

DEPARTMENT OF LAW AND PUBLIC SAFETY

DIVISION OF LAW

ENVIRONMENTAL PROTECTION SECTION

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FIRST ASSISTANT ATTORNEY GENERAL

TELEPHONE 609-292-1548

August 5, 1983

Honorable Reginald Stanton  
Superior Court of New Jersey  
228 Hall of Records  
Newark, New Jersey 07102

Re: State of New Jersey, Department of Environmental  
Protection v. Scientific Chemical Processing, Inc., et al  
Docket No. L-1852-83E

Dear Judge Stanton:

Pursuant to Your Honor's direction, on July 19, 1983 personnel from the Department of Environmental Protection (DEP) met with representatives of Inmar Associates, Mr. Presto, Mr. Sigmond, Ms. Sims and S & W Waste. The meeting was arranged by Inmar to discuss the cleanup of the Carlstadt site. Since Mr. Sigmond and Mr. Presto attended the meeting, discussions regarding cleanup of the Newark site also took place.

At the above meeting, S & W Waste presented DEP with a draft plan for cleanup of the Carlstadt site. After review of same, DEP personnel took the position that the proposal was generally acceptable, but requested further detail in the areas of Quality Control/ Quality Assurance (QA/QC), decontamination, air monitoring and safety. At the end of the meeting, both Inmar and Messrs. Presto and Sigmond agreed to provide me with the name of the cleanup contractor which they had retained by July 26, 1983. Further, each party was to provide DEP with a revised cleanup plan which included sections discussing the areas of deficiencies raised by DEP by August 2, 1983.

CARLSTADT SITE

Mr. Egan has advised me that S & W was retained by Inmar to handle

Exhibit "A"

August 5, 1983

the cleanup of the Carlstadt site. As requested, S & W submitted a revised cleanup plan. There is a major deficiency in the plan since S & W again failed to provide its QA/QC procedures. However, I have asked that DEP personnel contact S & W in order to promptly obtain same. I am advised that DEP had several other minor questions that can be answered in a telephone conversation with S & W personnel.

Based upon my conversations with DEP personnel, Mr. Egan and S & W Waste personnel, it appears that the sampling phase of the cleanup can start as early as next week.

#### NEWARK SITE

By letter dated July 27, 1983, Mr. Presto advised me that he intended to retain S & W Waste to handle the cleanup of the Newark site. (Copy attached). However, because Mr. Sigmond was overseas at the time, Mr. Presto stated that he could not advise me of the position of the Sigmond and Presto partnership.

I contacted Mr. Presto's office on August 3, 1983 attempting to determine whether he had, in fact, retained a cleanup contractor. Mr. Barbire, Mr. Presto's law partner, advised that Mr. Presto had met with S & W Waste and directed them to forward me a letter stating that they would be retained by Sigmond and Presto. Mr. Barbire was not able to be more specific because Mr. Presto had left the office for vacation. Thereafter, I contacted Robert Chitren of S & W Waste in an attempt to determine the status of the negotiations between his firm and Mr. Presto. He advised that Mr. Presto asked S & W to prepare a contract for his signature upon return from vacation.

I respectfully submit that Mr. Presto and Mr. Sigmond have not made an adequate effort to promptly retain a contractor to handle cleanup of the Newark site. At the hearing on July 7, 1983, the State took the position that the cleanup plan submitted by Presto and Sigmond was generally adequate. Since a contractor still has not been retained, it is clear that little movement has occurred in the last month. During the hearing, Your Honor made it very clear that the defendants were to make every effort to expedite the cleanups of the SCP sites. In the case of the Newark site, I do not believe that this direction was followed. Accordingly, if Mr. Presto does not advise me within 14 days of the date hereof that S & W Waste has been retained to cleanup the Newark site, I request that this Court set down the issue of the cleanup of the Newark site for a hearing. In addition, this hearing should deal with the financial capability of the defendants involved with that site to pay for same. I will contact Your Honor on August 22, 1983 to advise you of the situation.

Finally, it is my understanding that Your Honor will be moving from the Chancery Division, Essex County to Chancery Division, Morris County, on or about September 1, 1983. Because of the public importance

August 5, 1983

of this matter, there is a need to expedite it in every way possible. Accordingly, in order to assure that there are no delays in implementation of the cleanups, I request that this case remain on Your Honor's calender rather than being assigned to a new Judge.

Respectfully yours,

IRWIN I. KIMMELMAN  
ATTORNEY GENERAL

By David W. Rager  
David W. Rager  
Deputy Attorney General

DWR:map

Enclosure

cc: All counsel w/enc.  
Jerry Burke, Esq.  
Leonard Romino, BSM  
Mr. Leif R. Sigmond  
Mr. Herbert G. Case  
(w/enc.)

bc: Jonathon Berg



## CLEANUP AGREEMENT

This is an Agreement between LEIF R. SIGMOND and DOMINICK PRESTO a partnership, whose address is 18 Glen Road, Rutherford, New Jersey 07070 ("Owner"), and S & W WASTE, INC. ("S & W"), whose address is 115 Jacobus Avenue, South Kearny, New Jersey 07032.

### 1. SERVICES TO BE PERFORMED

a. Owner hereby engages S & W, and S & W hereby agrees, to stage, characterize, receive, transport, process and dispose of certain unidentified hazardous chemical wastes at 411 Wilson Avenue, Newark, New Jersey, such waste to be staged, characterized, received, transported, processed and disposed of by S & W in accordance with the attached Disposal Plan, upon the terms and conditions set forth in this Agreement.

b. It is understood that whenever possible, after consultation with owner, S & W shall mitigate the cost to owner and endeavour to sell or salvage any of the material on site. It is understood that Owner has already received an offer for certain material on hand; the proceeds from such sales shall be offset against charges made for handling.

It is understood and agreed and S & W represents to the Owner that it does have the technical knowledge to

form the work which is the subject matter of this contract.

In the performance of the work of this Agreement, S & W shall promptly stage, characterize, receive, transport, process and dispose of the waste in accordance with the high standards required. S & W shall be responsible for any and all of the consequences of its acts, due to negligence ~~or otherwise~~, for injury to persons or damage to property.

INITIAL *[Handwritten initials]*  
c. All services provided under this Agreement shall be in accord with applicable regulations of the New Jersey Department of Environmental Protection and other regulatory agencies having jurisdiction. S & W, at Owners' expense, shall secure all necessary site specific approvals for the project. Owner agrees to co-operate with S & W in securing governments approvals as requested. S & W represents that is has obtained all permits, licenses, and other forms of documentation required in order for it to perform its services under this contract; and will furnish copies thereof together with any certificates or any instruments related to the performance of S & W or its obligation under this Agreement.

d. S & W shall provide Owner with certificates of insurance, with Owner designated as "also insured" as set forth in the attached Schedule.

## 2. PAYMENT TERMS

a. In consideration of the covenants of this Agreement and for activities performed under this contract, the Owner agrees to pay S & W on a time and materials basis as outlined in the document labeled "Schedule A" attached and made a part hereof. At the end of the last working day of each calendar week, S & W will present Owner with a detailed invoice describing the work completed and the costs incurred pursuant to the Agreement. Owner agrees to make payment of said invoice within five (5) working days of receipt thereof.

b. It is understood and agreed that there are certain generators who have or will in the future agree to remove drums or bulk liquids from the premises. It is most desirable that S & W perform the work of said removal and Owner shall make every attempt to have said generators use the services of S & W. In this regard, S & W agrees to prepare specific cost proposals for said generator. Should S & W not be awarded the contract for said removal, then said generator shall be permitted to remove same with their own D.E.F. approved contractor and there shall be no charge made to the Owners. If the generator accepts S & W to provide the services, then the billing shall be made directly to the generator.

and the generator shall be responsible for the payment of same.

c. Notwithstanding any other condition of this Agreement or "Schedule A" hereof, the Owner shall have the right to seek competitive prices for disposal at D.E.P. approved sites and to provide any equipment which may be needed on the job site. Whenever there shall be alternate means of disposal, the Owner shall have the right to select the most cost effective method. The Owner reserves the right to lease equipment on a weekly or other basis.

d. S & W shall provide Owner with a proposed work schedule and the types of equipment which shall be needed on the job site so as to enable the Owner to determine whether it is their desire to rent required equipment on a longer term rather than daily.

e. S & W shall provide Owner with proposed costs as set forth on Schedule and thereafter the parties shall agree upon the percentage of cost override. S & W agrees to keep accurate and actual records of costs and Owner, or their accountant, shall have the right to inspect same.

### 3. TERM

a. This Agreement shall commence upon the signature of the parties, and shall terminate upon notification from

S & W, in writing, that the project is completed. Notwithstanding the above, however, either party may terminate this Agreement, without cause, upon five (5) working days notice, by giving the other party written notice (at the address shown above).

4. EMERGENCY ACTION

Whenever the safety of persons or of the work or property is threatened and the nature of such threat requires emergent relief, S & W, without seeking instruction from the Owner, shall act in its own discretion to prevent or mitigate injury or damage. If the actions of S & W in these cases give rise to additional costs, S & W shall include costs for payment according to the weekly invoice procedure established in this Agreement. Subject at all times to making the Owner and D.E.P. aware of any such problem as soon as possible under the circumstances.

5. EXCUSE OF PERFORMANCE

The performance or observance by either party of any obligations under this Agreement may be suspended in whole or in part, in the event of any of the following which prevent such performance or observance; acts of God, war, riot, fire, explosion, accident, flood, sabotage, strike, lockout,

injunction, inability to obtain fuel, power, raw materials, labor, containers or transportation facilities, breakage or failure of machinery or apparatus, national defense requirements, compliance with governmental laws, regulations, order or action, or any other cause (whether similar or dissimilar) beyond the reasonable control of such party; provided, however, that the parties shall prevent it from complying with its obligations hereunder shall immediately notify, in writing, the other party and the party so prevented shall exercise due diligence in removing or overcoming the causes of such inability to comply, provided, further, that neither party shall be required to settle a labor dispute against its own best judgment.

6. ACCESS TO PREMISES

Subject to the approval of the D.E.P. the Owner agrees that S & W, its agents and employees, shall during the term of this Agreement, be afforded access to owner's premises for the purpose of fulfilling its obligations.

7. ENTIRE AGREEMENT

This document, including the attached schedules, constitutes the entire Agreement between the parties. If any of the provisions of this Agreement are found to contravene

or otherwise be invalid under the laws of the State of New Jersey, such contravention or invalidity shall not invalidate the entire contract. In such case, the contract shall be construed as if not containing the particular provision or provisions held to be invalid and the rights and obligations of the parties shall be construed and enforced accordingly.

8. NOTICES

Unless otherwise specified in this Agreement, any notice, request, approval or other document required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been sufficiently given when delivered in person or deposited in the U. S. mail, postage prepaid, addressed as follows or to such other address as may be specified from time to time in a written notice given by the party requesting the change; if S & W: 115 Jacobus Avenue, South Kearny, New Jersey 07032. Attention: Harry Moscatello; if to Owner: 18 Glen Road, Rutherford, N. J 07070, Attention: Sigmond and Presto.

9. INSURANCE BY S & W

S & W shall provide the Owner with a complete list of all insurance coverages together with limits of each policy. Owner reserves the right to be named as an "also insured" on any of

such policies and Owner further has the right to examine true or photostatic copies of all such policies of insurance.

IN WITNESS WHEREOF, the parties herunto have set their hands and seals the day and year written below their names.

SIGNED, SEALED AND DELIVERED  
IN THE PRESENCE OF:

Carol Le Grand  
CAROL LE GRAND

SIGMOND & PRESTO

Leif R. Sigmond  
LEIF R. SIGMOND, Partner  
Dated: October 7, 1983

Dominick Presto  
DOMINICK PRESTO, Partner  
Dated: October 6, 1983

ATTEST:

Sharon L. Soule  
Secretary

S & W WASTE, INC.

BY Harry Moscatelli  
Vice President  
Dated: October 6, 1983



*S & W Waste, Inc.*

115 JACOBUS AVENUE  
SOUTH KEARNY, N.J. 07032

Tel: 344-4004

November 14, 1983

Mr. Marvin Mahan  
Inmar Associates, Inc.  
P.O. Box 190  
Scotch Plains, New Jersey 07076

RE: SCP-Carlstadt Contract

Dear Marvin:

The events which have led to this letter are that over four months ago you approached us to perform a clean up of the SCP-Carlstadt site. We indicated that based on our experience with State supervised clean-up jobs, expensive analytical requirements would be placed upon the clean-up operation. We also indicated that an accurate lump sum estimate of the clean-up cost could not be made until the analytical work was completed and the waste disposal plan prepared and approved by the State. Your people seemed to doubt our warnings that these projects were much more complicated than privately managed site clean-ups were in the past.

We gave you a proposed contract months ago and agreed to start some sampling on the job in a very limited capacity while the contract was being negotiated. Due to the great uncertainty over the cost, we agreed that a lump sum bid would be inappropriate, and our contract was based on a cost plus arrangement with weekly billing. I made it clear upon my execution of the final contract that work on the job would not proceed at any significant pace until a contract was executed by you. Nevertheless, based upon your desire to keep the job moving in some fashion, we did complete sampling and based upon your concern with economy, we did so with minimal amounts of manpower. This approach has saved you money and permitted the job to move at some pace. However, it has cost us in terms of our credibility with the DEP.

As a businessman who is extensively experienced in projects such as this, I am sure that you can appreciate our position. We cannot move into the next phase of the project until your commitment is made clear by executing a contract with us.

Exhibit "C"

Mr. Mahan

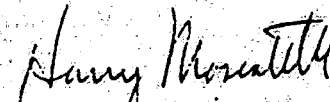
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November 14, 1983

Please be advised that effective today, I am suspending any work on the SCP Carlstadt project until we have resolved this question.

Sincerely,

S&W WASTE, INC.



Harry Moscatello

HM/sb

cc: Steven J. Picco, Esq.

Mr. Ron Senna, N.J. DEP

Mr. David Reger, N.J. DEP /